IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12487 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BAPLUBHAI DADBHAI VALA

Versus

V.C. TRIVEDI OR HIS SUCCESSOR IN HIS OFFICE

Appearance:

MR YN RAVANI for the Petitioner.

Mr.V.M. Pancholi, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 13/02/2003

ORAL JUDGEMENT

By filing this petition, the petitioner has challenged his detention order dated 3.10.2002. By the impugned order, he is detained under the Prevention of

Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980. Along with the detention order, the petitioner is also served with the grounds of detention. As per the aforesaid grounds, the petitioner has committed many irregularities in the matter of distribution of kerosene. The petitioner was required to give blue kerosene, which is to be supplied at subsidised rates to the card-holders. However, the petitioner has tried to sell the same by charging high price and he is accordingly indulging in black-marketing activity in the matter of distribution of the said kerosene. It is also found that the petitioner has not properly maintained the accounts and has tried to transfer about 180 litres of kerosene in an illegal manner. In view of the aforesaid grounds, he is detained under the aforesaid provision.

At the time of hearing of this petition, Mr.Ravani, learned Advocate for the petitioner, has fairly submitted that the licence which is given to the petitioner for the purpose of dealing in blue kerosene, is already cancelled by the Government, and he further submitted that the petitioner is not going to apply for the said licence again for the purpose of dealing in blue kerosene. The Civil Supplies Department may take this aspect into account in future so that if any application is made for giving fresh licence or for renewal of the licence, either by the petitioner or his near relatives, the Department can take into account the aforesaid aspect and the statement made by the petitioner through his Advocate here, also can be taken into consideration at the relevant time, if necessity arises.

The order of detention is attacked by Mr.Ravani, learned Advocate for the petitioner, on the ground that some of the documents at pages 32, 33, as well as page 156 are not legible. So far as the document at page 156 is concerned, the first line is absolutely not legible at all. Similarly, some other documents at pages 32, 33, etc. are also not clear.

The Sponsoring Authority has recorded the statements of witnesses on 2.10.2002 and therafter, they were submitted to the detaining authority. The detaining authority has passed the detention order on 3.10.2002. It is argued that in view of the decision of this Court in Ranubhai Bhikhabhai Bharwad v. State of Gujarat & Ors., XLI(3) GLR 2696, it is not possible to believe that the detaining authority has applied his mind within a short time after going through this big bunch of record and, therefore, the detaining authority passed the order in a mechanical manner. In the aforesaid ruling, this

Court has observed in paragraph 9 as under :-

> " ... ...
>
> The statements of the three witnesses in the instant case which were recorded before the Police Inspector on 17th August 1999, 21st August 1999 and 25th August 1999 with regard to the incidents dated 10th July 1999, 13thJune, 1999 and 26th June, 1999 were the material along with the proposal which is said to have been made on 27th August 1999 and it is clear from the record that it was on 29th August 1999 that the detaining authority has recorded its verification of all these three statements. There is nothing on record to show that the detaining authority had considered the proposal dated 27th August 1999 at any time prior to 29th August 1999 and on 29th August, 1999, all that has been done is that the concerned witnesses have stated before the detaining authority that the statements as had been made on the respective dates were correct and immediately thereafter on the following day, i.e. on 30th August 1999 the detention order has been passed.
>
> ... ..."

It is not in dispute that there is hardly a gap of one day between receiving the papers by the detaining authority from the sponsoring authority and passing the impugned order of detention. Considering such voluminous record and considering the fact that there are some papers, which require considerable time even for reading the same, as those documents are not clear, in my view, the detaining authority has passed the order in a mechanical manner, as, it is not possible to believe that within one day, the detaining authority could have gone through the entire record, especially when some pages of the documents are not legible. Even though the detaining authority has tried to justify the order of detention by submitting in the affidavit-in-reply that after considering all the documents, the order is passed, in my view, it is not possible to believe that the detaining authority could have gone through the entire record within a short span of time. In view of the aforesaid judgment of this Court and considering the fact that some

of the documents are not legible, this petition requires to be allowed.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the petitioner be released forthwith unless he is required in connection with any other case. Rule is made absolute.

13th February, 2003 (P.B. Majmudar, J.)

***

(apj)